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May 18, 1999

Ms. Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
100 Cambridge Street  
12th Floor  
Boston, MA 02202

RE: DTE 98-22 Comments on Proposed Rulemaking

Dear Ms. Cottrell:

The New England Gas Association submits the following comments on the Department of Telecommunications and Energy's proposed regulation 98-22 Standards To Be Employed by Public Utility Operators When Restoring any of the Streets, Lanes and Highways in Municipalities ("Standards").

The New England Gas Association (NEGA) is a regional trade association that represents the New England natural gas industry. Our membership includes the region's 24 natural gas distribution companies, five transmission companies and 280 associate member companies. In Massachusetts, the NEGA member companies provide service to 1.4 million customers through a 19,000 mile underground pipeline system servicing 260 cities and towns. Excavations (and restoration) of public streets for system maintenance and expanding services is a critical and necessary function which occurs 365 days a year, 24 hours a day throughout the state.

As a participant on the DTE Technical Committee, the following comments and request for clarification are based on the proposed mutually agreed upon standards submitted to the DTE on November 20 by Danny G. Cote of the Utility Group and David A. Webster of the Massachusetts Highway Association.

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#### Comment 1. Minimum Permit Requirements

Section 03 Minimum Permit Requirements, in pertinent part, negates the primary concept of establishing a uniform standard that was the mission of the committee established by the Department. That section provides that the proposed requirements "are minimum requirements that a Municipality may require when granting Permits." In addition, the definition for Street Opening Work under Section 02 implies that restoration work must be performed in accordance with municipal ordinances as well as the proposed Department standards. It was clearly understood by all parties to the Joint Agreement that the uniform standard provided the maximum requirements that utilities must comply with when restoring a street and that there would not be any other unilaterally determined methods. Therefore, NEGA believes that the proposed

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rule should be modified to reflect this. Otherwise, uniformity in restoration activities and consequent productivity by all parties concerned would be prevented.

#### Comment 2. Limiting Permanent Pavement Restoration

A. The time frames of November 15 and April 15 for limiting permanent pavement restoration which is in Section 9.14 conflicts with both Sections 9.11b and 9.12. The parties of the joint agreement understood that permanent paving would be performed as long as bituminous concrete is available. Further, there does not appear any foundation for the dates November 15 - April 15. Therefore, we believe that Section 9.14 should be deleted from the standard.

B. The Department modified the joint agreement by adding language to Section 9.4. It also added Paragraph c to Section 9.11. Utilities cannot perform same day permanent patching as required under Section 9.4, because emergency excavations are made outside of normal work hours when bituminous concrete may not be available. (e.g. weekends and nights). This appears to be recognized in Section 9.11c, which conflicts with Section 9.4. Therefore, the Department should clarify this issue.

C. The utilities have assumed ownership of temporary patches in the first sentence of Section 9.16. It seems unnecessary to require further action in the event of a severe meteorological event. Further, it may not be a safety priority for utilities after a severe meteorological event.

#### Comment 3. Infrared Pavement Restoration

The mandatory use of only the infrared method to restore single patches up to five by seven feet (Section 9.5) in area would provide an inflexible condition for utilities and municipalities.

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Because there are so many extant and future variables involved in street restoration, the utilities believe that the Department should not specify which methods should be used, especially exclusive ones, to accomplish the task.

It is our understanding that many municipalities recognize the benefits of other means of pavement restoration and the limitations of the infrared method. Therefore, the second sentence of Section 9.5, which mandates the sole use of the infrared method, should be deleted from the rule.

NEGA appreciates the opportunity to comment on this proposed regulation.

Sincerely,

Thomas M. Kiley

President

TMK/mlg